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# NC POLICY WATCH

Stories & voices  
that **matter.**

## Where to put NC's coal ash? Court of Appeals asked to rule on legality of high-profile option

By [Lisa Sorg](#)

It has been nearly four years since Feb. 2, 2014, when 39,000 tons of coal ash and 27 million gallons of contaminated water spilled from a failed impoundment at Duke Energy's Dan River plant in Eden.

And on Wednesday — Day 1,453 since the disaster that forever changed the state's environmental landscape — a flight of lawyers appeared before a three-judge panel of the North Carolina Court of Appeals.

This highly nuanced case, which pits three environmental groups against the NC Department of Environmental Quality and Charah/Green Meadow (a Kentucky-based coal ash disposal company), poses a key question: In early 2017, Chatham County Superior Court Judge Carl Fox ruled that DEQ had improperly permitted coal ash to be placed in what is tantamount to landfills in old clay mines. Did Fox, as attorneys representing DEQ and Charah allege, "abuse his discretion" and overstep his authority?

The argument, though, is more than semantical. The decision rendered by Appellate Justices James Arrowood, Ann Marie Calabria and Valerie Zachary could ultimately determine the proper burial grounds for millions of tons of coal ash from the Sutton and Riverbend plants that is currently destined for -- and dumped in -- Chatham and Lee counties.

Fox's ruling essentially stated that coal ash could not be deposited as "structural fill" for "beneficial reuse" in areas that had never been excavated. Structural fill, according to federal coal combustion rules, is supposed to top off old mines with material so the land can be redeveloped. Likewise, "beneficial use" is defined as "recycling or reuse of coal ash," such as in concrete, "in lieu of disposal." [\[Read more...\]](#)

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